S.B. CIVIL MISC. APPEAL NO.194/2004
(The New India Assurance Company Ltd. Vs. Miss Manasavi & others)

Date of Order :: 14.09.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Jagdish Vyas for the appellant

Mr.M.D.Vaishnav) for the respondents-claimants
Mr.NarpatSingh)

Mr.Ratan Singh for the respondent No.5.

This matter was heard at length on 11.09.2006, 12.09.2006 and 13.09.2006 and was placed for dictation of judgment today. However, before the matter was taken up for dictation of judgment, learned counsel for the parties exchanged propositions for settlement of this matter between themselves and made a request to defer dictation of judgment. At request, learned counsel were given some time to deliberate over.

After deliberations, ultimately learned counsel Mr.Jagdish Vas appearing for the insurer and learned counsel Mr.M.D.Vaishnav and Mr.Narpat Singh appearing for the claimants submitted that parties have reached to a consensus that though the appeal filed by the appellant insurer may not

be entertained on merits but the award as made by the Tribunal may be restated with modification of the amount awarded by the Tribunal and in place of award amount of Rs.33,75,000/-, the claimants may be allowed compensation in the sum of Rs.17,75,000/- and in place of interest at the rate of 9% per annum as awarded by the Tribunal, they may be allowed interest at the rate of 7.5% per annum

Having examined the impugned award and so also the entire record, this Court is satisfied that the settlement proposal as made by counsel for the parties is eminently just and proper and the figure arrived at between the parties very reasonably represents the amount of just compensation admissible in the present case.

The Tribunal has awarded compensation in the sum of Rs.33,75,000/- after taking the income of the deceased Sushil Khandelwal (37 years) at Rs.7,79,070/- per annum as stated in his tax return Ex 1 and after deducting the amount of income tax and after providing for component of future prospects has taken average income of the deceased at Rs.6,00,000/- per annum. The Tribunal has taken loss of contribution at Rs.3,00,000/- per annum in view of the claimants being the daughter and parents of the deceased. In the accident in question, Sushil Khandelwal (37 years) with his wife Sudha (32 years) and daughter Tapaswi (2½ years) perished; leaving

behind other daughter and mother of the deceased as heirs. The Tribunal applied a multiplier of 11 though the deceased was 37 years in age and the claimant daughter of the deceased was about 9-10 years of age and thereby calculated pecuniary loss at Rs.33,00,000/- and after adding Rs.50,000/- towards damage to the car and further component towards non-pecuniary loss and funeral expenses made the award in the sum of Rs.33,75,000/- and allowed interest at the rate of 9% per annum from the date of filing of the claim application.

In view of the decision of the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Nicolletta Rohtagi and others: (2002) 7 SCC 456, the insurer of the vehicle involved in the accident of course cannot be heard in appeal against the quantum awarded by the Tribunal, however, the quantum so awarded by the Tribunal being shockingly disproportionate to the amount of just compensation, the parties have rightly made the choice of entering into reasonable settlement. The parties have arrived at a consensus figure of Rs.17,75,000/- with interest at the rate of 7.5% from the date of filing of claim application; and on the facts and in the circumstances of this case, the figure agreed to by the parties appears very nearly representing the amount of just compensation admissible.

The income of the deceased as stated in the last income tax return included a figure of Rs.4,69,800/- as rental

income and, obviously, a large part thereof retains itself to the claimants and the same could not have been taken into consideration towards loss of contribution. The Tribunal was obviously in error in taking this part of income also into account while assessing loss of contribution. The other business income of the deceased is about Rs.3,09,266/- and loss of contribution could have been considered on its basis, but then it is required to be considered that the wife and other child of the deceased also perished in the same accident and the parents of the deceased have other children too. In the overall circumstances, loss of dependency in this case deserves to be considered at about Rs.1,18,000/- per annum (one-third of the business income at about Rs. 1.03 lacs and providing for another component of about Rs. 15 thousand towards some erosion of other part of income) and not more. Multiplier of 15 could be applied particularly in view of the facts that deceased was 37 years of age and has left behind a girl child of about 10 years of the age. Viewed in this light, the figure arrived at by the parties at Rs.17,75,000/- with interest at the rate of 7.5% per annum remains just and proper.

Of course the Tribunal allowed compensation for the property loss caused to the car to the tune of Rs.50,000/- but examination of the record shows that the damaged OPEL Austra Car was not even in the name of the deceased Sushil

Khandelwal but was standing in the name of his wife Smt.Sudha Khandelwal who has expired and in relation to her death, separate claim application was made (that has been course decided by the common award allowing compensation in the sum of Rs 2,35,000/- therein). It has been stated during the course of submissions that the claimant, father of the deceased, was required to conduct these claim cases and had already suffered serious agony and trauma having lost his son, daughter-in-law and grand daughter in the same accident and had to rely on accounting procedure adopted by the accountant concerned and was not in a position to correctly ascertain all the accounts of the deceased and therefore, such discrepancy has arisen. Be that as it may, claim for compensation for property damage could not have been awarded in the present case. However having examined the balance-sheets of deceased Sushil Khandewal and so also his wife Smt.Sudha Khandelwal, this Court is satisfied that the deceased was definitely engaged in extensive business dealing in real estate and was earning the amount as stated in the last income tax return though filed after his death; and viewed from any angle, a loss of contribution at Rs.1,18,000/- per annum for the claimants does not appear excessive. Having regard to the circumstances of the case, it is also appropriate to allow interest at the rate of 7.5% per annum in

place of 9% per annum as awarded by the Tribunal.

In the aforesaid view of the matter, the figure arrived at by the parties being very nearly the figure of just compensation deserves to be allowed as compensation to the claimants and the award deserves to be restated for the said amount.

The claimants shall, therefore, be entitled now for an amount of Rs.17,25,000/- after deducting Rs.50,000/- received under the no fault liability with interest at the rate of 7.5% per annum from the date of filing of claim application i.e. 23.01.2002.

Another fact noticeable in the present case is that the mother of deceased Smt.Kamla Devi has also expired and her legal representatives have of course been brought on record. This Court expressed an opinion that major part of compensation amount to be received in the present case ought to be diverted for the benefit of minor daughter of the deceased who has lost her parents; and learned counsel for the claimants in consultation with and on the instructions of the claimant Shri Devkinandan Khandelwal, father of the deceased, have readily agreed to this proposition. While admitting this appeal, this court stayed execution of the award beyond the amount of Rs. 5,00,000/-. In the circumstances of the case, it is ordered that the remaining amount now to be paid by the insurer shall be paid in the name of Kumari

Manaswi only. Counsel for the insurer has assured that within a period of ten days from today, the amount shall be deposited with the Tribunal concerned.

Grand father of Kumari Manaswi, Shri Devkinandan Khandelwal prayed before the court that entire amount may be placed in fixed deposit for the benefit of the child as he is otherwise looking after the needs of the child, who is at present taking education in a boarding school at Laxmangarh; and he wants to keep this amount intact for her better future. The Tribunal shall issue necessary directions for placing the entire amount so deposited by the insurer in appropriate deposit Scheme of Post Office and the interest accruing thereon shall also remain in deposit and no part of the amount shall be permitted to be withdrawn till the claimant Kumari Manaswi attains majority.

The appeal by the insurer of course stands dismissed but with the consent of the parties, the award stands modified as indicated above. No costs.

(DINESH MAHESHWARI),J.

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